

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Billie Dabney and Sylvia R. Gary,	)	
	)	C/A No. 3:11-0666-MBS-PJG
Plaintiffs,	)	
	)	
vs.	)	<b>O R D E R</b>
	)	
Kershaw County,	)	
	)	
Defendant.	)	
_____	)	

Plaintiffs Billie Dabney and Sylvia R. Gary filed this action in the Court of Common Pleas for Kershaw County, South Carolina, on December 16, 2011, alleging that their former employer, Defendant Kershaw County, discriminated against them on the basis of their age and constructively discharged them in violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq. (ADEA) (First and Second Causes of Action), and violated their right to equal protection under the law, in violation of 42 U.S.C. § 1983 (Fifth Cause of Action). They also allege state law causes of action for breach of contract (Third Cause of Action) and wrongful discharge in violation of public policy (Fourth Cause of Action). Defendant removed the case to this court on March 18, 2011. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Paige J. Gossett for pretrial handling.

On February 28, 2012, Defendant filed a motion for judgment on the pleadings as to Plaintiffs' Third, Fourth, and Fifth Causes of Action. Defendant asserts (1) Plaintiffs' claim for breach of contract (Third Cause of Action) is not cognizable because Plaintiffs did not allege the existence of a personnel policy that adopted a progressive discipline or mandatory termination

procedure; (2) Plaintiffs' claim for wrongful discharge in violation of public policy (Fourth Cause of Action) is barred because Plaintiffs possess a statutory remedy under the ADEA; and (3) Plaintiff's § 1983 claim (Fifth Cause of Action) fails because the ADEA provides the exclusive judicial remedy for claims of age discrimination. Plaintiffs filed a response in opposition to Defendant's motion on April 2, 2012.

On April 11, 2012, the Magistrate Judge issued a Report and Recommendation in which she recommended that Defendant's motion for judgment on the pleadings be granted as to the Fourth and Fifth Causes. As to the Third Cause of Action, the Magistrate Judge determined that judgment on the pleadings is premature until further factual development of the record is made. Accordingly, the Magistrate Judge recommended that Defendant's motion for judgment on the pleadings be granted in part and denied in part. No party filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. This court is obligated to conduct a de novo review of every portion of the Magistrate Judge's report to which objections have been filed. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The Report and Recommendation is adopted and incorporated herein by reference. Defendant's motion for judgment on the pleadings (ECF No. 23) is **granted** as to the Fourth Cause of Action (wrongful discharge in violation of public policy and Fifth Cause of Action (violation of 42 U.S.C. § 1983). Defendant's motion for judgment on the pleadings is **denied** as to the Third Cause of Action (breach of contract). The matter is recommitted to the Magistrate Judge for additional pretrial handling.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
Chief United States District Judge

Columbia, South Carolina

May 7, 2012.